IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Civil Writ Petition No. 2325 of 2001 (S/S)
(Old No. 25092/1997)

Shri Bachi Singh
S/o Shri Sher Singh
9 Brookhill, Officers residence
Mallital, Nainital. ……Petitioner

Versus

1. The Chief Development Officer, Nainital.
2. Acharya, Kshetriya Gramya Vikas Sansthan
Haldwani, District Nainital. …… Respondents

Shri K.N. Joshi, learned Counsel for the Petitioner.
Shri Paresh Tripathi and Harendra Belwal, brief holder for the State

Hon'ble Prafulla C. Pant, J.

By means of this writ petition, moved under Article 226 of the Constitution of India, the petitioner has challenged the order dated 25.06.1997 (copy Annexure-3 to the writ petition) whereby this services were terminated from the Group 'D' post.

2. Brief facts of the case, as narrated in the writ petition, are that the petitioner was appointed as Class IV employee as 'Patrawahak' in the Kshetriya Gramya Vikas Sansthan of Rural Development Department. He joined his duties on 23.11.1995 in pursuance of the appointment letter dated 22.11.1995 (copy Annexure-1 to the writ petition). Before the appointment, an interview was held on 20.11.1995 on the basis of the list, containing names including that of the

petitioner, forwarded by the Employment Exchange. However, suddenly the services of the petitioner were terminated w.e.f. 25.06.1997 (copy Annexure-3 to the writ petition). The petitioner has challenged the said order on the ground that he had completed more than one and a half years unblemished services to the satisfaction of all his superiors. It is further alleged in the writ petition that the petitioner's services were wrongly terminated in violation of the rules.

3. A counter affidavit has been filed on behalf of the respondents in which it has been stated that the petitioner was appointed against temporary post and his services were liable to be terminated at any time by giving one months notice or one months salary in lieu thereof. It is further stated in the counter affidavit that the impugned termination order was passed in accordance with the rules . It is also stated in the counter affidavit that since the government abolished 'housing cell' of the Rural Development Department as such there was no need of services of the petitioner, and he being the junior most employee was served with the order of the termination. Lastly, it is stated in the counter affidavit that the Appointing Authority i.e. District Development Officer has not been impleaded by the petitioner in the writ petition as such the petition is bad in law.

4. I heard learned counsel for the parties and perused the affidavit, counter affidavit and rejoinder affidavit along with the annexures annexed there to.

5. Before further discussions, this Court feels it necessary to examine the letter of appointment dated 22.11.1995 which reads as under:-

'' कार्यालय मुख्य विकास अधिकारी, नैनीताल।

पत्रांक /1–स्था/28/च0श्र0/दिनांक 22 नवम्बर, 1995

कार्यालय आदेश

नियुक्ति

अधिनस्थ कार्यालय समूह ''घ'' कर्मचारी सेवा नियमावली 1985 के अधीन गठित चयन प्राधिकारी समिति द्वारा जिला सेवायोजन कार्यालय, नैनीताल से भेजे गये अभ्यर्थियों के दिनांक 20.11.95 के लिये गये साक्षात्कार के फलस्वरूप श्री बची सिंह, पुत्र श्री शेर सिंह, 9–बुकहिल, अधिकारी निवास, मल्लीताल नैनीताल की नियुक्ति चतुर्थ श्रेणी (पत्रवाहक) के पद पर क्षेत्रीय ग्राम्य विकास संस्थान, पीपुल्स कॉलेज, हल्द्वानी (नैनीताल) में कार्यभार ग्रहण करने की तिथि से वेतनमान रू0 750–12–870 –द0रो–14–940 पर अनुमन्य भत्तों सहित की जाती है। यह नियुक्ति पूर्वतया अस्थाई है तथा किसी भी समय उभय पक्ष की ओर से एक माह का नोटिस के एवज में एक माह के अग्रिम वेतन भुगतान किये जाने पर समाप्त की जा सकेगी।

योगदान देने से पूर्व श्री सिंह को निम्न प्रमाण–पत्रों की प्रतिलिपि जिला विकास अधिकारी के कार्यलय में प्रस्तुत करेगें और शिक्षा योग्यता एवं आयु के मूल प्रमाण–पत्र का भी अवलोकन करायेगें।''

The aforementioned appointment letter itself shows that the petitioner was appointed on Group-'D' post purely on temporary basis and the letter itself contained the condition that his services are liable to be terminated at any time by

giving him one month notice or one month salary in lieu thereof. There is no dispute as to the fact in the present case that the termination of the petitioner from service is not based either on stigma or in any other charge. The order of termination dated 25.06.1997 is simplicitor which reads as under:-

''कार्यालय आदेश

ग्राम्य विकास अनुभाग–5 के शासनादेश संख्या 1349/38.5.97–20/आ0प्र0/97 दिनांक 9.4.97 द्वारा आवास विकास प्रकोष्ठ समाप्त कर दिये जाने के फलस्वरूप अब विभाग को श्री बच्ची सिंह, पत्र वाहक की सेवाओं की आवश्यकता नहीं है। अतः श्री बच्ची सिंह को एक माह का अग्रिम वेतन भुगतान करते हुये दिनांक 25.6.97 से उनकी सेवायें समाप्त की जाती है।

(जे0 के0 तिवारी)
जिला विकास अधिकारी
नैनीताल। ''

The above letter, terminating the services of the petitioner is impugned before this Court. Said order itself shows that in view of abolishing of 'housing cell' in the department, services of petitioner as 'Patrawahak' are no more required. It is also mentioned in the letter that the will be entitled to one month salary in lieu of one month notice. As such there appears no illegality in the impugned order.

7. Learned counsel for the petitioner drew my attention to Rule 25 of Group 'D' Employees Service (U.P.) Rules, 1985, and argued that since the petitioner stood confirmed

on completion of period probation after a year as such his services could not have been terminated. Rule 25 of aforesaid rule reads as under:-

"25. Confirmations- A probationer shall be confirmed in his appointment at the end of the period of probation or extended period of probation, as the case may be, if his work and conduct have been found to be satisfactory, the appointing authority considers him fit for confirmation and his integrity is certified."

I have examined the matter from the angle, the petitioner has argued. For the benefit of Rule 25, one requires to have been placed on probation under Rule 24 which provides that a person on appointment to a post in the establishment in a permanent vacancy shall be placed on probation for a period of one year provided that the continuous service rendered in a officiating or temporary capacity in a post borne on the Establishment may be taken into account in computing the period of probation for that post. In other words, Rule 24 provides that only the person appointed on a permanent vacancy is on probation, and period spent on officiating or temporary capacity, shall be treated as the period of probation. It is no where stated by the present petitioner, if his appointment was against a permanent vacancy nor is it his case that such vacancy was available to him on later date. As such the benefit of said rule cannot be said to be available to the petitioner unless he is appointed against a permanent vacancy nor is it his case that such vacancy was available to him on later date. In the service jurisprudence, it is settled principle of law that a person appointed on a temporary basis gets confirmed on availability of a permanent vacancy. Here in

the present case, it is not a case of the petitioner that he was appointed against permanent post rather his appointment letter shows that he was appointed on a temporary basis. As such benefit of rule of confirmation is not available to the petitioner.

8. Shri K.N. Joshi, learned Counsel for the petitioner, drew my attention on Annexure-2 to the writ petition which is a copy of the letter dated 09.11.1995 whereby the petitioner was called for interview by the District Development Officer. Said letter reads as under:-

'' आपका सेवायोजन कार्यालय, नैनीताल से चतुर्थ श्रेणी पद के लिये नाम आया है। इस जनपद के अधिष्ठान में रिक्त चतुर्थ क्षेत्रीय ग्राम्य विकास संस्थान, पीपुल्स कॉलेज, हल्द्वानी हावें जो इस हेतु आपको कोई मार्ग व्यय देय न होगा।

(जुगल किशोर तिवारी)
जिला विकास अधिकारी
नैनीताल

Learned Counsel referring the aforesaid letter emphasized that the word 'RIKT' referred to the permanent vacancy but this Court is unable to accept the submission for the reason that mere 'RIKT' means 'VACANCY' which includes temporary as well as the permanent vacancy.

9. On examination of the entire matter in controversy since this Court is satisfied that the impugned order of termination is simplicitor in nature and is I terms of the

appointment letter, issued to the petitioner and as such suffers from no illegality.

10. In the circumstances, the writ petition is dismissed with the observation that if the petitioner meanwhile is reappointed or absorbed in service by the respondents, the observations made in the judgment shall not come in the way in continuance of his service. No order as to costs.

(Prafulla C. Pant, J.)

Dt: March 19, 2005
Sweta